
HOUSE BILL 1749

State of Washington 60th Legislature 2007 Regular Session

By Representatives Condotta, Chandler and Crouse

Read first time 01/26/2007. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to simplifying and adding certainty to the
2 calculation of workers' compensation benefits; amending RCW 51.08.178,
3 51.32.050, 51.32.060, and 51.32.240; reenacting and amending RCW
4 51.32.090; adding new sections to chapter 51.08 RCW; providing an
5 effective date; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 51.08.178 and 1988 c 161 s 12 are each amended to read
8 as follows:

9 ~~(1) ((For the purposes of this title, the monthly wages the worker~~
10 ~~was receiving from all employment at the time of injury shall be the~~
11 ~~basis upon which compensation is computed unless otherwise provided~~
12 ~~specifically in the statute concerned. In cases where the worker's~~
13 ~~wages are not fixed by the month, they shall be determined by~~
14 ~~multiplying the daily wage the worker was receiving at the time of the~~
15 ~~injury;~~

16 ~~(a) By five, if the worker was normally employed one day a week;~~

17 ~~(b) By nine, if the worker was normally employed two days a week;~~

18 ~~(c) By thirteen, if the worker was normally employed three days a~~
19 ~~week;~~

1 ~~(d) By eighteen, if the worker was normally employed four days a~~
2 ~~week;~~

3 ~~(e) By twenty two, if the worker was normally employed five days a~~
4 ~~week;~~

5 ~~(f) By twenty six, if the worker was normally employed six days a~~
6 ~~week;~~

7 ~~(g) By thirty, if the worker was normally employed seven days a~~
8 ~~week.~~

9 ~~The term "wages" shall include the reasonable value of board,~~
10 ~~housing, fuel, or other consideration of like nature received from the~~
11 ~~employer as part of the contract of hire, but shall not include~~
12 ~~overtime pay except in cases under subsection (2) of this section.~~
13 ~~However, tips shall also be considered wages only to the extent such~~
14 ~~tips are reported to the employer for federal income tax purposes. The~~
15 ~~daily wage shall be the hourly wage multiplied by the number of hours~~
16 ~~the worker is normally employed. The number of hours the worker is~~
17 ~~normally employed shall be determined by the department in a fair and~~
18 ~~reasonable manner, which may include averaging the number of hours~~
19 ~~worked per day.~~

20 ~~(2) In cases where (a) the worker's employment is exclusively~~
21 ~~seasonal in nature or (b) the worker's current employment or his or her~~
22 ~~relation to his or her employment is essentially part time or~~
23 ~~intermittent, the monthly wage shall be determined by dividing by~~
24 ~~twelve the total wages earned, including overtime, from all employment~~
25 ~~in any twelve successive calendar months preceding the injury which~~
26 ~~fairly represent the claimant's employment pattern.~~

27 ~~(3) If, within the twelve months immediately preceding the injury,~~
28 ~~the worker has received from the employer at the time of injury a bonus~~
29 ~~as part of the contract of hire, the average monthly value of such~~
30 ~~bonus shall be included in determining the worker's monthly wages.~~

31 ~~(4) In cases where a wage has not been fixed or cannot be~~
32 ~~reasonably and fairly determined, the monthly wage shall be computed on~~
33 ~~the basis of the usual wage paid other employees engaged in like or~~
34 ~~similar occupations where the wages are fixed)) "Wages" means the gross~~
35 ~~remuneration paid in cash by the employer to the worker for services~~
36 ~~performed with respect to a pay period, before any deductions. "Paid~~
37 ~~in cash" means payment in cash, by check, by electronic transfer, or by~~
38 ~~other means made directly to the worker.~~

1 (a) Tips shall be considered wages only to the extent that such
2 tips are reported to the employer for federal income tax purposes.

3 (b) Wages include the actual value of board, housing, and fuel
4 received from the employer as part of the contract of hire. This
5 subsection (1)(b) does not apply during any period in which the
6 employer continues to provide, through a past or current payment,
7 board, housing, and/or fuel, that were provided to the employee at the
8 time of the injury or manifestation of occupational disease.

9 (c) Wages also include the cash value of mental and physical health
10 insurance received from the employer as part of the contract of hire.
11 This subsection (1)(c) does not apply during any period in which the
12 employer continues to provide, through a past or current payment,
13 mental and physical health insurance that was provided to the employee
14 at the time of the injury or manifestation of occupational disease.

15 (d) Wages do not include fringe benefits. Fringe benefits are any
16 consideration given to a worker in addition to wages, including, but
17 not limited to: Retirement and financial benefit plans of whatever
18 nature; life, disability, and wage-replacement insurance of whatever
19 nature; unused, accrued leave of whatever nature; memberships of
20 whatever nature; employee discounts or use or consumption of employer
21 services, materials, equipment, and facilities of whatever nature;
22 training and education of whatever nature; and other employee or
23 beneficiary benefit plan for the employee's or beneficiaries' benefit
24 resulting from the employment relationship.

25 (2)(a) During the initial payment period, the worker's monthly wage
26 shall be the total monthly wages earned from all employment, including
27 cash bonuses and overtime pay, in the thirty days immediately preceding
28 the pay period in which the date of injury or manifestation of
29 occupational disease occurred. "Initial payment period" means the
30 period starting on the date the claim for injury or manifestation of
31 occupational disease was filed and ending on the last day of the
32 twelfth consecutive calendar week following the date the claim was
33 filed.

34 (b) The worker's monthly wage during the initial payment period
35 shall be established using itemized pay statements in the pay periods
36 covering the thirty days preceding the pay period of the date of injury
37 or manifestation of occupational disease. If itemized pay statements
38 are not available from the employer or worker covering the entire

1 thirty-day period, the department shall calculate the monthly wage
2 using any available pay statements for the thirty-day period. If no
3 pay statements for the thirty-day period can be produced by either the
4 employer or the worker, the monthly wage shall be established based on
5 the contract of hire as determined in a statement from the employer and
6 worker.

7 (c) After the initial payment period, the worker's monthly wage
8 shall be determined by dividing by twelve the total wages earned from
9 all employment, including cash bonuses and overtime pay, in the twelve
10 consecutive calendar months immediately preceding the month in which
11 the injury or manifestation of occupational disease occurred.

12 (d) In cases where the worker is self-employed or the worker's
13 monthly wage cannot be reasonably determined under (b) of this
14 subsection due to the worker sustaining an injury or occupational
15 disease less than thirty days after beginning an employment
16 relationship that both the worker and the employer intend to be
17 continuous and lasting without limit into the foreseeable future, and
18 which provides wages, on an annualized basis, of greater than one
19 hundred fifty percent of wages earned by the worker in the twelve
20 months before beginning such employment, the monthly wage shall be
21 computed on the basis of the usual wage paid other employees of the
22 employer at the time of injury or manifestation of occupational disease
23 who perform like job duties with like work patterns or, if none exist,
24 other employees in the worker's labor market who perform like job
25 duties with like work patterns.

26 NEW SECTION. Sec. 2. A new section is added to chapter 51.08 RCW
27 to read as follows:

28 (1) During the initial payment period, the worker's employer shall,
29 to the extent possible, continue to provide the following if they were
30 provided by the worker's employer as part of the contract of hire and
31 were received by the worker at the time of the injury: (a) Board,
32 housing, and fuel; and (b) mental and physical health insurance.

33 (2) If the employer cannot continue to provide one or more of the
34 benefits described in subsection (1) of this section during the initial
35 payment period, the employer shall notify the department and the
36 department will adjust the worker's monthly wage calculation using the
37 cash value of the benefit the employer is unable to provide.

1 **Sec. 3.** RCW 51.32.050 and 1995 c 199 s 6 are each amended to read
2 as follows:

3 (1) Where death results from the injury the expenses of burial not
4 to exceed two hundred percent of the average monthly wage in the state
5 as defined in RCW 51.08.018 shall be paid.

6 (2)(a)~~(i)~~ For claims with date of injury or manifestation of
7 occupational disease before July 1, 2007, where death results from the
8 injury, a surviving spouse of a deceased worker eligible for benefits
9 under this title shall receive monthly for life or until remarriage
10 payments according to the following schedule:

11 ~~((i))~~ (A) If there are no children of the deceased worker, sixty
12 percent of the wages of the deceased worker but not less than one
13 hundred eighty-five dollars;

14 ~~((ii))~~ (B) If there is one child of the deceased worker and in
15 the legal custody of such spouse, sixty-two percent of the wages of the
16 deceased worker but not less than two hundred twenty-two dollars;

17 ~~((iii))~~ (C) If there are two children of the deceased worker and
18 in the legal custody of such spouse, sixty-four percent of the wages of
19 the deceased worker but not less than two hundred fifty-three dollars;

20 ~~((iv))~~ (D) If there are three children of the deceased worker and
21 in the legal custody of such spouse, sixty-six percent of the wages of
22 the deceased worker but not less than two hundred seventy-six dollars;

23 ~~((v))~~ (E) If there are four children of the deceased worker and
24 in the legal custody of such spouse, sixty-eight percent of the wages
25 of the deceased worker but not less than two hundred ninety-nine
26 dollars; or

27 ~~((vi))~~ (F) If there are five or more children of the deceased
28 worker and in the legal custody of such spouse, seventy percent of the
29 wages of the deceased worker but not less than three hundred twenty-two
30 dollars.

31 (ii) For claims with date of injury or manifestation of
32 occupational disease on or after July 1, 2007, where death results from
33 the injury, a surviving spouse of a deceased worker eligible for
34 benefits under this title shall receive monthly for life or until
35 remarriage payments of sixty-six and two-thirds percent of the wages of
36 the deceased worker, but not less than two hundred seventy-six dollars.

37 (b) Where the surviving spouse does not have legal custody of any
38 child or children of the deceased worker or where after the death of

1 the worker legal custody of such child or children passes from such
2 surviving spouse to another, any payment on account of such child or
3 children not in the legal custody of the surviving spouse shall be made
4 to the person or persons having legal custody of such child or
5 children. The amount of such payments shall be five percent of the
6 monthly benefits payable as a result of the worker's death for each
7 such child but such payments shall not exceed twenty-five percent.
8 Such payments on account of such child or children shall be subtracted
9 from the amount to which such surviving spouse would have been entitled
10 had such surviving spouse had legal custody of all of the children and
11 the surviving spouse shall receive the remainder after such payments on
12 account of such child or children have been subtracted. Such payments
13 on account of a child or children not in the legal custody of such
14 surviving spouse shall be apportioned equally among such children.

15 (c) Payments to the surviving spouse of the deceased worker shall
16 cease at the end of the month in which remarriage occurs: PROVIDED,
17 That a monthly payment shall be made to the child or children of the
18 deceased worker from the month following such remarriage in a sum equal
19 to five percent of the wages of the deceased worker for one child and
20 a sum equal to five percent for each additional child up to a maximum
21 of five such children. Payments to such child or children shall be
22 apportioned equally among such children. Such sum shall be in place of
23 any payments theretofore made for the benefit of or on account of any
24 such child or children. If the surviving spouse does not have legal
25 custody of any child or children of the deceased worker, or if after
26 the death of the worker, legal custody of such child or children passes
27 from such surviving spouse to another, any payment on account of such
28 child or children not in the legal custody of the surviving spouse
29 shall be made to the person or persons having legal custody of such
30 child or children.

31 (d) In no event shall the monthly payments provided in subsection
32 (2) of this section exceed the applicable percentage of the average
33 monthly wage in the state as computed under RCW 51.08.018 as follows:

34	AFTER	PERCENTAGE
35	June 30, 1993	105%
36	June 30, 1994	110%

1	June 30, 1995	115%
2	June 30, 1996	120%

3 (e) In addition to the monthly payments provided for in subsection
4 (2)(a) through (c) of this section, a surviving spouse or child or
5 children of such worker if there is no surviving spouse, or dependent
6 parent or parents, if there is no surviving spouse or child or children
7 of any such deceased worker shall be forthwith paid a sum equal to one
8 hundred percent of the average monthly wage in the state as defined in
9 RCW 51.08.018, any such children, or parents to share and share alike
10 in said sum.

11 (f) Upon remarriage of a surviving spouse the monthly payments for
12 the child or children shall continue as provided in this section, but
13 the monthly payments to such surviving spouse shall cease at the end of
14 the month during which remarriage occurs. However, after September 8,
15 1975, an otherwise eligible surviving spouse of a worker who died at
16 any time prior to or after September 8, 1975, shall have an option of:

17 (i) Receiving, once and for all, a lump sum of twenty-four times
18 the monthly compensation rate in effect on the date of remarriage
19 allocable to the spouse for himself or herself pursuant to subsection
20 (2)(a)(i)(A) of this section and subject to any modifications specified
21 under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty
22 percent of the then remaining annuity value of his or her pension,
23 whichever is the lesser: PROVIDED, That if the injury occurred prior
24 to July 28, 1991, the remarriage benefit lump sum available shall be as
25 provided in the remarriage benefit schedules then in effect; or

26 (ii) If a surviving spouse does not choose the option specified in
27 subsection (2)(f)(i) of this section to accept the lump sum payment,
28 the remarriage of the surviving spouse of a worker shall not bar him or
29 her from claiming the lump sum payment authorized in subsection
30 (2)(f)(i) of this section during the life of the remarriage, or shall
31 not prevent subsequent monthly payments to him or to her if the
32 remarriage has been terminated by death or has been dissolved or
33 annulled by valid court decree provided he or she has not previously
34 accepted the lump sum payment.

35 (g) If the surviving spouse during the remarriage should die
36 without having previously received the lump sum payment provided in
37 subsection (2)(f)(i) of this section, his or her estate shall be

1 entitled to receive the sum specified under subsection (2)(f)(i) of
2 this section or fifty percent of the then remaining annuity value of
3 his or her pension whichever is the lesser.

4 (h) The effective date of resumption of payments under subsection
5 (2)(f)(ii) of this section to a surviving spouse based upon termination
6 of a remarriage by death, annulment, or dissolution shall be the date
7 of the death or the date the judicial decree of annulment or
8 dissolution becomes final and when application for the payments has
9 been received.

10 (i) If it should be necessary to increase the reserves in the
11 reserve fund or to create a new pension reserve fund as a result of the
12 amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of
13 such increase in pension reserve in any such case shall be transferred
14 to the reserve fund from the supplemental pension fund.

15 (3) If there is a child or children and no surviving spouse of the
16 deceased worker or the surviving spouse is not eligible for benefits
17 under this title, a sum equal to thirty-five percent of the wages of
18 the deceased worker shall be paid monthly for one child and a sum
19 equivalent to fifteen percent of such wage shall be paid monthly for
20 each additional child, the total of such sum to be divided among such
21 children, share and share alike: PROVIDED, That benefits under this
22 subsection or subsection (4) of this section shall not exceed the
23 lesser of sixty-five percent of the wages of the deceased worker at the
24 time of his or her death or the applicable percentage of the average
25 monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

31 (4) In the event a surviving spouse receiving monthly payments
32 dies, the child or children of the deceased worker shall receive the
33 same payment as provided in subsection (3) of this section.

34 (5) If the worker leaves no surviving spouse or child, but leaves
35 a dependent or dependents, a monthly payment shall be made to each
36 dependent equal to fifty percent of the average monthly support

1 actually received by such dependent from the worker during the twelve
2 months next preceding the occurrence of the injury, but the total
3 payment to all dependents in any case shall not exceed the lesser of
4 sixty-five percent of the wages of the deceased worker at the time of
5 his or her death or the applicable percentage of the average monthly
6 wage in the state as defined in RCW 51.08.018 as follows:

7	AFTER	PERCENTAGE
8	June 30, 1993	105%
9	June 30, 1994	110%
10	June 30, 1995	115%
11	June 30, 1996	120%

12 If any dependent is under the age of eighteen years at the time of the
13 occurrence of the injury, the payment to such dependent shall cease
14 when such dependent reaches the age of eighteen years except such
15 payments shall continue until the dependent reaches age twenty-three
16 while permanently enrolled at a full time course in an accredited
17 school. The payment to any dependent shall cease if and when, under
18 the same circumstances, the necessity creating the dependency would
19 have ceased if the injury had not happened.

20 (6) For claims filed prior to July 1, 1986, if the injured worker
21 dies during the period of permanent total disability, whatever the
22 cause of death, leaving a surviving spouse, or child, or children, the
23 surviving spouse or child or children shall receive benefits as if
24 death resulted from the injury as provided in subsections (2) through
25 (4) of this section. Upon remarriage or death of such surviving
26 spouse, the payments to such child or children shall be made as
27 provided in subsection (2) of this section when the surviving spouse of
28 a deceased worker remarries.

29 (7) For claims filed on or after July 1, 1986, every worker who
30 becomes eligible for permanent total disability benefits shall elect an
31 option as provided in RCW 51.32.067.

32 **Sec. 4.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read
33 as follows:

34 (1) Except as provided in subsection (2) of this section, when the

1 supervisor of industrial insurance (~~shall~~) determines that permanent
2 total disability results from the injury, the worker shall receive
3 monthly during the period of such disability:

4 (a) If married at the time of injury, sixty-five percent of his or
5 her wages but not less than two hundred fifteen dollars per month.

6 (b) If married with one child at the time of injury, sixty-seven
7 percent of his or her wages but not less than two hundred fifty-two
8 dollars per month.

9 (c) If married with two children at the time of injury, sixty-nine
10 percent of his or her wages but not less than two hundred eighty-three
11 dollars.

12 (d) If married with three children at the time of injury,
13 seventy-one percent of his or her wages but not less than three hundred
14 six dollars per month.

15 (e) If married with four children at the time of injury,
16 seventy-three percent of his or her wages but not less than three
17 hundred twenty-nine dollars per month.

18 (f) If married with five or more children at the time of injury,
19 seventy-five percent of his or her wages but not less than three
20 hundred fifty-two dollars per month.

21 (g) If unmarried at the time of the injury, sixty percent of his or
22 her wages but not less than one hundred eighty-five dollars per month.

23 (h) If unmarried with one child at the time of injury, sixty-two
24 percent of his or her wages but not less than two hundred twenty-two
25 dollars per month.

26 (i) If unmarried with two children at the time of injury,
27 sixty-four percent of his or her wages but not less than two hundred
28 fifty-three dollars per month.

29 (j) If unmarried with three children at the time of injury,
30 sixty-six percent of his or her wages but not less than two hundred
31 seventy-six dollars per month.

32 (k) If unmarried with four children at the time of injury,
33 sixty-eight percent of his or her wages but not less than two hundred
34 ninety-nine dollars per month.

35 (l) If unmarried with five or more children at the time of injury,
36 seventy percent of his or her wages but not less than three hundred
37 twenty-two dollars per month.

1 (2) For any claim with date of injury or manifestation of
2 occupational disease on or after July 1, 2007, when the supervisor of
3 industrial insurance determines that permanent total disability results
4 from the injury, the worker shall receive monthly during the period of
5 such disability sixty-six and two-thirds percent of his or her wages as
6 determined under RCW 51.08.178, but not less than two hundred
7 seventy-six dollars per month.

8 (3) For any period of time where both husband and wife are entitled
9 to compensation as temporarily or totally disabled workers, only that
10 spouse having the higher wages of the two shall be entitled to claim
11 their child or children for compensation purposes under subsection (1)
12 of this section.

13 (~~(3)~~) (4) In case of permanent total disability, if the character
14 of the injury is such as to render the worker so physically helpless as
15 to require the hiring of the services of an attendant, the department
16 shall make monthly payments to such attendant for such services as long
17 as such requirement continues, but such payments shall not obtain or be
18 operative while the worker is receiving care under or pursuant to the
19 provisions of chapter 51.36 RCW and RCW 51.04.105.

20 (~~(4)~~) (5) Should any further accident result in the permanent
21 total disability of an injured worker, he or she shall receive the
22 pension to which he or she would be entitled, notwithstanding the
23 payment of a lump sum for his or her prior injury.

24 (~~(5)~~) (6) In no event shall the monthly payments provided in this
25 section exceed the applicable percentage of the average monthly wage in
26 the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

27
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30
31
32 The limitations under this subsection shall not apply to the
33 payments provided for in subsection (~~(3)~~) (4) of this section.

34 (~~(6)~~) (7) In the case of new or reopened claims, if the
35 supervisor of industrial insurance determines that, at the time of

1 filing or reopening, the worker is voluntarily retired and is no longer
2 attached to the work force, benefits shall not be paid under this
3 section.

4 ~~((7))~~ (8) The benefits provided by this section are subject to
5 modification under RCW 51.32.067.

6 **Sec. 5.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993
7 c 271 s 1 are each reenacted and amended to read as follows:

8 (1) When the total disability is only temporary, the schedule of
9 payments contained in RCW 51.32.060 (1) and ~~((2))~~ (3) shall apply, so
10 long as the total disability continues.

11 (2) Any compensation payable under this section for children not in
12 the custody of the injured worker as of the date of injury shall be
13 payable only to such person as actually is providing the support for
14 such child or children pursuant to the order of a court of record
15 providing for support of such child or children.

16 (3)(a) As soon as recovery is so complete that the present earning
17 power of the worker, at any kind of work, is restored to that existing
18 at the time of the occurrence of the injury, the payments shall cease.
19 If and so long as the present earning power is only partially restored,
20 the payments shall:

21 (i) For claims for injuries that occurred before May 7, 1993,
22 continue in the proportion which the new earning power shall bear to
23 the old; or

24 (ii) For claims for injuries occurring on or after May 7, 1993,
25 equal eighty percent of the actual difference between the worker's
26 present wages and earning power at the time of injury, but: (A) The
27 total of these payments and the worker's present wages may not exceed
28 one hundred fifty percent of the average monthly wage in the state as
29 computed under RCW 51.08.018; (B) the payments may not exceed one
30 hundred percent of the entitlement as computed under subsection (1) of
31 this section; and (C) the payments may not be less than the worker
32 would have received if (a)(i) of this subsection had been applicable to
33 the worker's claim.

34 (b) No compensation shall be payable under this subsection (3)
35 unless the loss of earning power shall exceed five percent.

36 (4)(a) Whenever the employer of injury requests that a worker who
37 is entitled to temporary total disability under this chapter be

1 certified by a physician as able to perform available work other than
2 his or her usual work, the employer shall furnish to the physician,
3 with a copy to the worker, a statement describing the work available
4 with the employer of injury in terms that will enable the physician to
5 relate the physical activities of the job to the worker's disability.
6 The physician shall then determine whether the worker is physically
7 able to perform the work described. The worker's temporary total
8 disability payments shall continue until the worker is released by his
9 or her physician for the work, and begins the work with the employer of
10 injury. If the work thereafter comes to an end before the worker's
11 recovery is sufficient in the judgment of his or her physician to
12 permit him or her to return to his or her usual job, or to perform
13 other available work offered by the employer of injury, the worker's
14 temporary total disability payments shall be resumed. Should the
15 available work described, once undertaken by the worker, impede his or
16 her recovery to the extent that in the judgment of his or her physician
17 he or she should not continue to work, the worker's temporary total
18 disability payments shall be resumed when the worker ceases such work.

19 (b) Once the worker returns to work under the terms of this
20 subsection (4), he or she shall not be assigned by the employer to work
21 other than the available work described without the worker's written
22 consent, or without prior review and approval by the worker's
23 physician.

24 (c) If the worker returns to work under this subsection (4), any
25 employee health and welfare benefits that the worker was receiving at
26 the time of injury shall continue or be resumed at the level provided
27 at the time of injury. Such benefits shall not be continued or resumed
28 if to do so is inconsistent with the terms of the benefit program, or
29 with the terms of the collective bargaining agreement currently in
30 force.

31 (d) In the event of any dispute as to the worker's ability to
32 perform the available work offered by the employer, the department
33 shall make the final determination.

34 (5) No worker shall receive compensation for or during the day on
35 which injury was received or the three days following the same, unless
36 his or her disability shall continue for a period of fourteen
37 consecutive calendar days from date of injury: PROVIDED, That attempts

1 to return to work in the first fourteen days following the injury shall
2 not serve to break the continuity of the period of disability if the
3 disability continues fourteen days after the injury occurs.

4 (6) Should a worker suffer a temporary total disability and should
5 his or her employer at the time of the injury continue to pay him or
6 her the wages which he or she was earning at the time of such injury,
7 such injured worker shall not receive any payment provided in
8 subsection (1) of this section during the period his or her employer
9 shall so pay such wages.

10 (7) In no event shall the monthly payments provided in this section
11 exceed the applicable percentage of the average monthly wage in the
12 state as computed under the provisions of RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
13		
14	June 30, 1993	105%
15	June 30, 1994	110%
16	June 30, 1995	115%
17	June 30, 1996	120%

18 (8) If the supervisor of industrial insurance determines that the
19 worker is voluntarily retired and is no longer attached to the work
20 force, benefits shall not be paid under this section.

21 **Sec. 6.** RCW 51.32.240 and 2004 c 243 s 7 are each amended to read
22 as follows:

23 (1)(a) Whenever any payment of benefits under this title is made
24 because of clerical error, mistake of identity, innocent
25 misrepresentation by or on behalf of the recipient thereof mistakenly
26 acted upon, or any other circumstance of a similar nature, all not
27 induced by willful misrepresentation, the recipient thereof shall repay
28 it and recoupment may be made from any future payments due to the
29 recipient on any claim with the state fund or self-insurer, as the case
30 may be. The department or self-insurer, as the case may be, must make
31 claim for such repayment or recoupment within one year of the making of
32 any such payment or it will be deemed any claim therefor has been
33 waived.

34 (b) Except as provided in subsections (3), (4), and (5) of this
35 section, the department may only assess an overpayment of benefits

1 because of adjudicator error when the order upon which the overpayment
2 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.
3 "Adjudicator error" includes the failure to consider information in the
4 claim file, failure to secure adequate information, or an error in
5 judgment.

6 (c) The director, pursuant to rules adopted in accordance with the
7 procedures provided in the administrative procedure act, chapter 34.05
8 RCW, may exercise his discretion to waive, in whole or in part, the
9 amount of any such timely claim where the recovery would be against
10 equity and good conscience.

11 (2) Whenever the department or self-insurer fails to pay benefits
12 because of clerical error, mistake of identity, or innocent
13 misrepresentation, all not induced by recipient willful
14 misrepresentation, the recipient may request an adjustment of benefits
15 to be paid from the state fund or by the self-insurer, as the case may
16 be, subject to the following:

17 (a) The recipient must request an adjustment in benefits within one
18 year from the date of the incorrect payment or it will be deemed any
19 claim therefore has been waived.

20 (b) The recipient may not seek an adjustment of benefits because of
21 adjudicator error. Adjustments due to adjudicator error are addressed
22 by the filing of a written request for reconsideration with the
23 department of labor and industries or an appeal with the board of
24 industrial insurance appeals within sixty days from the date the order
25 is communicated as provided in RCW 51.52.050. "Adjudicator error"
26 includes the failure to consider information in the claim file, failure
27 to secure adequate information, or an error in judgment.

28 (3) Whenever the department issues an order rejecting a claim for
29 benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for
30 temporary disability benefits has been paid by a self-insurer pursuant
31 to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the
32 recipient thereof shall repay such benefits and recoupment may be made
33 from any future payments due to the recipient on any claim with the
34 state fund or self-insurer, as the case may be. The director, under
35 rules adopted in accordance with the procedures provided in the
36 administrative procedure act, chapter 34.05 RCW, may exercise
37 discretion to waive, in whole or in part, the amount of any such

1 payments where the recovery would be against equity and good
2 conscience.

3 (4) Whenever any payment of benefits under this title has been made
4 pursuant to an adjudication by the department or by order of the board
5 or any court and timely appeal therefrom has been made where the final
6 decision is that any such payment was made pursuant to an erroneous
7 adjudication, the recipient thereof shall repay it and recoupment may
8 be made from any future payments due to the recipient on any claim with
9 the state fund or self-insurer, as the case may be. The director,
10 pursuant to rules adopted in accordance with the procedures provided in
11 the administrative procedure act, chapter 34.05 RCW, may exercise his
12 discretion to waive, in whole or in part, the amount of any such
13 payments where the recovery would be against equity and good
14 conscience.

15 (5)(a) Whenever any payment of benefits under this title has been
16 induced by willful misrepresentation the recipient thereof shall repay
17 any such payment together with a penalty of fifty percent of the total
18 of any such payments and the amount of such total sum may be recouped
19 from any future payments due to the recipient on any claim with the
20 state fund or self-insurer against whom the willful misrepresentation
21 was committed, as the case may be, and the amount of such penalty shall
22 be placed in the supplemental pension fund. Such repayment or
23 recoupment must be demanded or ordered within three years of the
24 discovery of the willful misrepresentation.

25 (b) For purposes of this subsection (5), it is willful
26 misrepresentation for a person to obtain payments or other benefits
27 under this title in an amount greater than that to which the person
28 otherwise would be entitled. Willful misrepresentation includes:

29 (i) Willful false statement; or

30 (ii) Willful misrepresentation, omission, or concealment of any
31 material fact.

32 (c) For purposes of this subsection (5), "willful" means a
33 conscious or deliberate false statement, misrepresentation, omission,
34 or concealment of a material fact with the specific intent of
35 obtaining, continuing, or increasing benefits under this title.

36 (d) For purposes of this subsection (5), failure to disclose a
37 work-type activity must be willful in order for a misrepresentation to
38 have occurred.

1 (e) For purposes of this subsection (5), a material fact is one
2 which would result in additional, increased, or continued benefits,
3 including but not limited to facts about physical restrictions, or
4 work-type activities which either result in wages or income or would be
5 reasonably expected to do so. Wages or income include the receipt of
6 any goods or services. For a work-type activity to be reasonably
7 expected to result in wages or income, a pattern of repeated activity
8 must exist. (~~For those activities that would reasonably be expected
9 to result in wages or produce income, but for which actual wage or
10 income information cannot be reasonably determined, the department
11 shall impute wages pursuant to RCW 51.08.178(4).)~~)

12 (6) The worker, beneficiary, or other person affected thereby shall
13 have the right to contest an order assessing an overpayment pursuant to
14 this section in the same manner and to the same extent as provided
15 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
16 final under chapter 51.52 RCW and notwithstanding the provisions of
17 subsections (1) through (5) of this section, the director, director's
18 designee, or self-insurer may file with the clerk in any county within
19 the state a warrant in the amount of the sum representing the unpaid
20 overpayment and/or penalty plus interest accruing from the date the
21 order became final. The clerk of the county in which the warrant is
22 filed shall immediately designate a superior court cause number for
23 such warrant and the clerk shall cause to be entered in the judgment
24 docket under the superior court cause number assigned to the warrant,
25 the name of the worker, beneficiary, or other person mentioned in the
26 warrant, the amount of the unpaid overpayment and/or penalty plus
27 interest accrued, and the date the warrant was filed. The amount of
28 the warrant as docketed shall become a lien upon the title to and
29 interest in all real and personal property of the worker, beneficiary,
30 or other person against whom the warrant is issued, the same as a
31 judgment in a civil case docketed in the office of such clerk. The
32 sheriff shall then proceed in the same manner and with like effect as
33 prescribed by law with respect to execution or other process issued
34 against rights or property upon judgment in the superior court. Such
35 warrant so docketed shall be sufficient to support the issuance of
36 writs of garnishment in favor of the department or self-insurer in the
37 manner provided by law in the case of judgment, wholly or partially
38 unsatisfied. The clerk of the court shall be entitled to a filing fee

1 under RCW 36.18.012(10), which shall be added to the amount of the
2 warrant. A copy of such warrant shall be mailed to the worker,
3 beneficiary, or other person within three days of filing with the
4 clerk.

5 The director, director's designee, or self-insurer may issue to any
6 person, firm, corporation, municipal corporation, political subdivision
7 of the state, public corporation, or agency of the state, a notice to
8 withhold and deliver property of any kind if there is reason to believe
9 that there is in the possession of such person, firm, corporation,
10 municipal corporation, political subdivision of the state, public
11 corporation, or agency of the state, property that is due, owing, or
12 belonging to any worker, beneficiary, or other person upon whom a
13 warrant has been served for payments due the department or self-
14 insurer. The notice and order to withhold and deliver shall be served
15 by certified mail accompanied by an affidavit of service by mailing or
16 served by the sheriff of the county, or by the sheriff's deputy, or by
17 any authorized representative of the director, director's designee, or
18 self-insurer. Any person, firm, corporation, municipal corporation,
19 political subdivision of the state, public corporation, or agency of
20 the state upon whom service has been made shall answer the notice
21 within twenty days exclusive of the day of service, under oath and in
22 writing, and shall make true answers to the matters inquired or in the
23 notice and order to withhold and deliver. In the event there is in the
24 possession of the party named and served with such notice and order,
25 any property that may be subject to the claim of the department or
26 self-insurer, such property shall be delivered forthwith to the
27 director, the director's authorized representative, or self-insurer
28 upon demand. If the party served and named in the notice and order
29 fails to answer the notice and order within the time prescribed in this
30 section, the court may, after the time to answer such order has
31 expired, render judgment by default against the party named in the
32 notice for the full amount, plus costs, claimed by the director,
33 director's designee, or self-insurer in the notice. In the event that
34 a notice to withhold and deliver is served upon an employer and the
35 property found to be subject thereto is wages, the employer may assert
36 in the answer all exemptions provided for by chapter 6.27 RCW to which
37 the wage earner may be entitled.

1 This subsection shall only apply to orders assessing an overpayment
2 which are issued on or after July 28, 1991: PROVIDED, That this
3 subsection shall apply retroactively to all orders assessing an
4 overpayment resulting from fraud, civil or criminal.

5 (7) Orders assessing an overpayment which are issued on or after
6 July 28, 1991, shall include a conspicuous notice of the collection
7 methods available to the department or self-insurer.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.08 RCW
9 to read as follows:

10 The department may adopt rules necessary to implement RCW
11 51.08.178.

12 NEW SECTION. **Sec. 8.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 July 1, 2007.

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